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Comptroller General  
of the United States

United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** Demusz Manufacturing Company, Inc.

**File:** B-290575

**Date:** August 5, 2002

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Larry Harper for the protester.

Howard Q. Bain, Esq., and Milton D. Watkins, Esq., Department of the Air Force, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Where request for proposals provided for evaluation of technical acceptability on pass/fail basis and selection of awardee from among those offerors whose proposals had been determined technically acceptable through application of a price/past performance trade-off, contracting officer reasonably selected awardee's technically acceptable, higher-priced proposal over protester's technically acceptable, lower-priced one where he determined that protester's price advantage was outweighed by its lower past performance rating.

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### DECISION

Demusz Manufacturing Company, Inc. protests the award of a contract to Dover Tool Company under request for proposals (RFP) No. F34601-02-R-0079, issued by the Department of the Air Force for stage 2 support turbine nozzles for the F110 aircraft. Demusz contends that its proposal represented the best value to the government.

We deny the protest.

The RFP in this procurement, which was set aside for small business, contemplated award of a fixed-price contract to the offeror whose proposal represented the best value to the government. Proposals were to be evaluated on the basis of technical, past performance, and price factors. The solicitation provided for the evaluation of technical acceptability on a pass/fail basis and for the selection of an awardee from among those offerors whose proposals had been determined technically acceptable through application of a price/performance trade-off. Past performance and price

were of equal weight. The solicitation further provided that in evaluating offerors' past performance, the contracting officer would consider "RYG Program ratings" on like and similar Federal Stock Classifications (FSC),<sup>1</sup> review the offerors' performance on any recent relevant contracts awarded by the procuring activity, and take into account both his personal knowledge and any data independently obtained from other government and commercial sources.

Six proposals were received by the February 15, 2002 closing date, five of which were determined technically acceptable. Demusz's overall price of \$1,750,944 was lowest; Dover's price of \$1,861,520 was second low. The contracting officer assigned Dover a past performance rating of satisfactory and Demusz (and each of the other three offerors), a rating of marginal.<sup>2</sup> In assigning the protester a rating of marginal for past performance, the contracting officer considered the ratings assigned Demusz by the RYG system, which were green for quality and red for delivery, and information from the Defense Logistics Agency's Mechanization of Contract Administration System (MOCAS), which revealed a delinquency rate of 33.3 percent on Demusz's current contracts.<sup>3</sup> In addition, the contracting officer considered Demusz's performance under a prior Air Force contract for the same item, F34601-99-C-0082, finding that Demusz had experienced trouble in producing the items on the contract; that the contract delivery date schedule had been revised several times, resulting in an extension of the final delivery date from September 2000 to May 2001; that part of the delivery delay was due to the contractor requesting a waiver/deviation for 20 items; that the Air Force had accepted the waiver/deviation for 12 of the items, but determined the remaining 8 unacceptable; and that the

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<sup>1</sup> The RYG (Red/Yellow/Green) Program is a Navy/Air Force automated system that classifies the performance risk associated with a particular vendor by assigning a color rating to the vendor's quality and delivery performance history in individual FSCs. A rating of green signifies low risk; yellow signifies moderate risk; and red signifies high risk. A neutral classification is assigned to suppliers who are first time quoters to the government for the FSC involved, suppliers otherwise having no past performance data in the RYG database for the FSC involved, and suppliers whose past performance data in the RYG database for the FSC involved are over 3 years old. See RFP at 33.

<sup>2</sup> The RFP defined a rating of Satisfactory/Confidence as signifying that "[b]ased on the offeror's performance record, some doubt exists that the offeror will successfully perform the required effort," and a rating of Marginal/Little Confidence as signifying that "[b]ased on the offeror's performance record, substantial doubt exists that the offeror will successfully perform the required effort[;] [c]hanges to the offeror's existing processes may be necessary in order to achieve contract requirements." RFP at 34.

<sup>3</sup> While the RYG system rates a contractor's performance within a particular stock class, MOCAS does not differentiate among stock classes.

contract was completed only after the government agreed to increase the allowable variation in quantity to -5 percent, thus allowing the contractor to ship six fewer items. Price Competition Memorandum at 5. Dover's satisfactory rating reflected its RYG system rating of green for both quality and delivery and its MOCAS contract delinquency rate of 16.7 percent. The contracting officer determined that Demusz's price advantage was outweighed by its significantly lower past performance rating and that Dover's proposal represented the best value to the government. Id. On April 5, the agency awarded a contract to Dover.

Demusz argues that in making his best value determination, the contracting officer failed to adequately consider the benefits of its proposal, which, according to the protester, include its lower price, its experience (and Dover's lack of experience) in manufacturing the part, its having previously obtained first article approval for the part, and its superior machinery and equipment.

Where an award is to be based on the best value to the government, a cost/technical trade-off may be made in selecting an awardee, subject only to the test of rationality and consistency with the stated evaluation factors. Eng'g and Prof'l Servs., Inc., B-262179, Dec. 6, 1995, 95-2 CPD ¶ 266 at 4. In this regard, price/past performance trade-offs are permitted when, as here, such trade-offs are consistent with the solicitation's evaluation scheme. USA Elec., B-275389, Feb. 14, 1997, 97-1 CPD ¶ 75 at 3.

The protester argues that it should have received a higher technical score than Dover because it has better machinery and equipment and has already obtained first article approval for the item. The solicitation provided for the evaluation of technical acceptability on a pass/fail basis, however; accordingly, it was consistent with the evaluation scheme set forth in the RFP for the contracting officer not to further distinguish between Demusz and Dover on the basis of technical merit once he had determined that their proposals were technically acceptable. To the extent that the protester is objecting to the fact that the RFP provided for the evaluation of technical acceptability on a pass/fail, as opposed to comparative, basis, a protest based upon an alleged impropriety in a solicitation must be filed prior to the time set for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2002). Because Demusz did not object to the provision in question prior to the closing time for receipt of proposals, but instead delayed raising the issue until after it had been notified of the award to Dover, this ground of its protest is untimely and will not be considered.

Regarding Demusz's contention that it should have received credit in the evaluation for its experience in furnishing the part in question to the government, the RFP did not identify experience as an evaluation factor; consequently, the agency was under no obligation to credit Demusz for having previously furnished the item. Moreover, as noted above, the contracting officer did in fact consider the quality of Demusz's performance under its prior contract for this part in his evaluation; rather than concluding that Demusz's performance under the prior contract demonstrated its

ability to perform the solicited effort successfully, however, he concluded that the protester's performance

supported the RYG computer generated Delivery component RED rating for Demusz and further indicated that the government had detected meaningful quality problems when Demusz had previously manufactured the item and seriously called into question Demusz's RYG GREEN quality rating, at least for the item being procured.

Contracting Officer's Statement of Facts at 11.

Finally, regarding the protester's argument that the contracting officer failed to consider its price advantage in his trade-off decision, the record reflects not that the contracting officer ignored Demusz's price advantage, but rather that he determined that the protester's price advantage was outweighed by its marginal past performance. We see nothing irrational in this determination.

The protest is denied.

Anthony H. Gamboa  
General Counsel